

ORDINANCE NO. 97-16

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF PALM BEACH COUNTY, FLORIDA, ORDINANCE 92-20, AS AMENDED, AS FOLLOWS: AMENDING SEC. 6.4.D.22. OF THE UNIFIED LAND DEVELOPMENT CODE; IMPOSING A ONE HUNDRED AND EIGHTY (180) DAY MORATORIUM ON THE APPROVAL OF APPLICATIONS FOR DEVELOPMENT PERMITS FOR COMMERCIAL COMMUNICATION TOWERS AND TOWER FACILITIES; PROVIDING FOR THE TREATMENT OF PENDING APPLICATIONS AND PREVIOUSLY APPROVED COMMERCIAL COMMUNICATION TOWERS AND TOWER FACILITIES; PROVIDING FOR EXCLUSIONS; PROVIDING FOR THE ACCEPTANCE OF APPLICATIONS; PROVIDING FOR INTERPRETATION OF CAPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Telecommunications Act of 1996, hereinafter referred to as the "Act", was signed into law on February 8, 1996; and

WHEREAS, the Act preserves the authority of local governments to make decisions regarding the placement, construction and modification of commercial communication towers and facilities as long as those decisions do not unreasonably discriminate among providers of functionally equivalent services or prohibit or have the effect of prohibiting the provision of personal wireless services; and

WHEREAS, passage of the Act, changes in wireless communication technology, additional licenses granted by the Federal Communications Commission and the increased consumer demand for personal wireless services has had the effect of creating a climate of heightened competition among the providers of personal wireless services and numerous providers of personal wireless services have expressed the desire to locate personal wireless communications facilities within the County; and

WHEREAS, this increased competition has resulted in an increase in the number of applications for approval of commercial communication towers and facilities in the County; and

WHEREAS, the Act further provides that a state or local government shall act on any request for authorization to place, construct, or modify commercial communication towers and facilities within a reasonable period of time after the request is filed with that government; and

WHEREAS, the number of potential sites within the County which would be acceptable for the installation of commercial communication towers and facilities is limited; and

WHEREAS, the Board of County Commissioners has determined that the current provisions within Unified Land Development Code (ULDC) of Palm Beach County relating to the regulation of the placement and construction of commercial communication towers and facilities are inadequate as they relate to compatibility with surrounding properties, proliferation of towers and ensuring that co-location of antennas is required; and

WHEREAS, the County requires time to study the adequacy of its current

1 regulatory ordinances and to explore and develop modifications or additions to
2 those ordinances; and

3
4 **WHEREAS**, the Board of County Commissioners has directed staff to draft
5 any needed amendments to the ULDC determined to be required to protect the
6 aesthetic, health, safety and welfare concerns found to exist; and

7 **WHEREAS**, County staff has begun the process of researching and drafting
8 any such amendments to the ULDC of Palm Beach County; and

9 **WHEREAS**, the Board of County Commissioners has directed staff to
10 participate in an intergovernmental task force related to the placement of
11 commercial communication towers and facilities throughout the entire County; and

12 **WHEREAS**, the Board of County Commissioners is desirous of protecting
13 residential areas from a proliferation of cellular towers while the new regulations
14 are being drafted; and

15 **WHEREAS**, the Board of County Commissioners has provided for the
16 continued siting of certain commercial communication towers and facilities to
17 ensure the health, safety and welfare of the citizens; and

18 **WHEREAS**, the moratorium, together with the continued study, including the
19 review of the Federal Communication Commission rules, and investigation relating
20 to the placement of commercial communication towers and facilities, is consistent
21 with the Act; and

22 **WHEREAS**, the Board of County Commissioners at the April 15, 1997 public
23 hearing declared its intent to impose a 180 calendar day moratorium, beginning on
24 the effective date of this ordinance, relating to all applications for the approval of
25 development permits for commercial communication towers and facilities.

26 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
27 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:**

28 **Part 1.** Section 6.4.D.22 is hereby amended to add the following language:

29 Section 6.4.D.22. Communication tower, commercial. AM/FM radio, television,
30 microwave and cellular telephone transmission towers, antennas and accessory
31 equipment and buildings. A commercial communication tower use shall comply
32 with the following supplementary use standards: If this section prohibits a
33 government owned tower from being located at a specific site and the tower is
34 required to protect the public welfare or safety, the applicable criteria of this
35 section may be waived or modified by the BCC. In such cases the BCC shall make
36 a finding of fact indicating the justification for the modification.

37 **Moratorium**

38 **(A)** That the Board of County Commissioners of Palm Beach County does hereby
39 impose a one hundred eighty (180) day moratorium beginning on the effective date
40 of this ordinance, upon the approval of all applications for development permits for
41 commercial communication towers or facilities.

42 If amendments to Section 6.4.D.22 of the ULDC of Palm Beach County are
43 adopted prior to the final date of the moratorium, such ordinance shall include a
44 provision repealing this moratorium ordinance.

1 (B) That this ordinance shall not apply to any legally sufficient application for
2 development permits submitted prior to the effective date of this ordinance,
3 pursuant to Section 6.4.D.22 of the ULDC of Palm Beach County, or the items
4 indicated below in Subpart C.

5 (C) This ordinance specifically excludes and shall not affect: (1) building or roof
6 mounted antennas and their ancillary equipment structures;(2) relocation of towers
7 or facilities due to public right-of-way acquisition; (3) tower replacement with
8 structures of the same type and height; (4) pole attachments or the placement of
9 antennas, and their ancillary equipment structures, where such attachment or
10 placement does not involve the construction, structural modification or expansion
11 of a tower structure; (5) publicly owned towers or facilities required to ensure the
12 public safety of the citizens; and (6) the construction of a new tower as follows: a.
13 towers proposed on parcels five (5) acres or less shall be located a minimum of
14 2,500 feet from the property line of an existing residential structure and b. towers
15 proposed on parcels greater than five (5) acres shall be located a minimum of
16 2,500 feet from the wall of an existing residential structure. Tower locations
17 consistent with the requirements of this subsection may submit an application for
18 development permit approval subject to the current requirements of the ULDC.

19 (D) Applications consistent with the existing ordinance shall be accepted,
20 reviewed, and processed to the point where they are ready to be considered by the
21 initial reviewing body subject to the following: (1) the applicant will pay all
22 applicable fees; (2) the application will be subject to all regulations in effect after
23 the expiration of the moratorium or any extension thereof; (3) the applicant will
24 sign a hold-harmless agreement which recognizes that there may be differences
25 between the current zoning requirements and the requirements that will be in effect
26 at the expiration of any moratorium; (4) the applicant will agree that any application
27 not meeting the terms of the new ordinance will be administratively withdrawn or
28 amended to be consistent with the new requirements after adoption of the new
29 ordinance; and (5) the applicant will further agree that there will be no refund of
30 application fees for costs expended by the County in the event an application is
31 administratively withdrawn.
32

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33 **PART 2. CAPTIONS:**

34 The captions, section headings, and section designations used in this ordinance are
35 intended for the convenience of users only and shall have no effect in the
36 interpretation of the provisions of this ordinance.

37 **PART 3. REPEAL OF LAWS IN CONFLICT:**

38 All local laws and ordinances applying to the unincorporated area of Palm Beach
39 County in conflict with any provision of this ordinance are hereby repealed to the
40 extent of any conflict.

41 **PART 4. SEVERABILITY:**

42 If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for
43 any reason held by the Court to be unconstitutional, inoperative or void, such
44 holding shall not affect the remainder of this ordinance.

45 **PART 5. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE:**

46 The provision of this ordinance shall become and be made a part of the Unified
47 Land Development Code of Palm Beach County, Florida. The Sections of the
48 ordinance may be renumbered or relettered to accomplish such, and the word

"ordinance" may be changed to "section," "article," or any other appropriate word.

PART 6. EFFECTIVE DATE:

The provisions of this ordinance shall become effective upon filing with the Department of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, on the 20th day of May, 1997.

ATTEST: PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY COMMISSIONERS
DOROTHY H. WILKEN

By

Deputy Clerk

Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:

County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 23 day of
May, 1997, at n/a m.

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STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on 5/30/97
DATED at West Palm Beach, FL on 5/20/97.
DOROTHY H. WILKEN, Clerk
Phyllis A. House D.C.